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 of Holders of Executory Contract Rights  
 through USA Commercial Mortgage Company

**UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

JOINTLY ADMINISTERED  
 Chapter 11

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Date: October 25, 2006  
 Time: 9:30 a.m.

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**OFFICIAL COMMITTEE OF DIRECT LENDERS' STATEMENT IN SUPPORT OF  
 MOTION FOR ORDER SCHEDULING AN AUCTION FOR THE SALE OF CERTAIN  
 ASSETS, APPOINTING SPCP GROUP, LLC, AS LEAD BIDDER, AND APPROVING  
 BID PROCEDURES AND PROTECTIONS**

1 The Official Committee of Holders of Executory Contract Rights through USA  
 2 Commercial Mortgage Company (the "Official Committee of Direct Lenders"), by and through  
 3 its counsel, the law firm of Gordon & Silver, Ltd., hereby submits the following Statement  
 4 ("Statement") in Support of Motion for Order Scheduling An Auction for the Sale of Certain  
 5 Assets, Appointing SPCP Group, LLC as Lead Bidder, and Approving Bid Procedures and  
 6 Protections (the "Bid Procedures Motion").  
 7

8 This Statement is made and based upon the legal argument contained herein, the papers  
 9 and pleadings contained in the Court's file, judicial notice of which is respectfully requested, and  
 10 any argument to be entertained at any hearing on Debtors' Bid Procedures Motion.<sup>1</sup>  
 11

12 **I.**  
 13 **THE OFFICIAL COMMITTEE OF DIRECT**  
 14 **LENDERS SUPPORT THE BID PROCEDURES MOTION**

15 As set forth herein, the Official Committee of Direct Lenders fully supports the Debtors'  
 16 Bid Procedures Motion as being the most efficient way to (1) maximize value to Debtors'  
 17 various estates; (2) provide a mechanism to find a replacement loan servicer for the remaining  
 18 loan portfolio; and (3) provide a foundation on which to confirm a consensual plan.

19 **A. The Loan Service Agreements.**

20 As this Court is aware, the loan portfolio brokered by USACM is short-term in nature  
 21 with maturity dates of generally no more than two (2) years. As the portfolio evolves during  
 22 these proceedings, the natural result has been the satisfaction of "performing" loans leaving an  
 23 ever increasing proportional share of "non-performing" loans. This continued deterioration of  
 24 the overall portfolio, when taken together with the fact that USACM has already consumed the  
 25 most profitable components of each loan (origination fees, extension fees, equity participation,  
 26

27 <sup>1</sup> Unless otherwise defined herein, all defined terms have the meaning ascribed to them in Debtors' Motion for Order  
 28 Scheduling an Auction for the Sale of Certain Assets, Appointing Silver Point Group, LLC as Lead bidder, and  
Approving Bid Procedures and Protections, Docket No. 1352.

1 success fees, etc.) has made the marketing of the servicing rights under the LSAs exceptionally  
 2 difficult.

3 **B. The Economic Decision to Tie the Sale of Servicing Rights to the Sale of FTDF**  
 4 **Assets.**

5 For the reasons set forth above, it has proven difficult to find a replacement loan servicer,  
 6 let alone one willing to pay for the right to service Direct Lender loans. Anecdotally, the sale  
 7 process has not resulted in the presentation of any bid by a loan servicer contemplating the  
 8 transfer of only the rights and obligations under the LSAs without the purchase of other estate  
 9 assets. Quite to the contrary, servicing rights under the LSAs have more value to those bidding  
 10 for the assets of the FTDF as it provides a mechanism to realize the spread between the FTDF  
 11 purchase price and face amount of the notes through diligent and effective collection efforts.  
 12 Without linking the sale of FTDF assets to the transfer of LSA servicing rights, Direct Lenders  
 13 run the risk of having to come out of pocket to find a replacement loan servicer.

15 **C. The Official Committee of Direct Lenders is Confident in Silver Point's Ability to**  
 16 **Perform Under the LSAs.**

17 The Official Committee of Direct Lenders and their professionals have met on several  
 18 occasions with principals of Silver Point and are confident in their ability to perform under the  
 19 LSAs. While it is true that Silver Point is a hedge fund whose primary interest is in purchasing  
 20 the FTDF loan portfolio, they have demonstrated an ability to service. Among other information  
 21 provided to the Official Committee of Direct Lenders is evidence that Silver Point has the  
 22 experience and necessary expertise to effectively service the Direct Lender loans.

24 **D. Approval of the Bid Procedures Motion will Reduce Administrative Expenses.**

25 One of the Official Committee of Direct Lenders' primary goals is to effectuate a transfer  
 26 of LSA servicing rights as soon as possible. Given the pace at which administrative claims are  
 27 accruing, approval of the Bid Procedures Motion and confirmation of a plan will relieve  
 28

1 Mesirow of their obligation to perform servicing functions and will help reduce the pace of  
2 professional fees.

3 **E. The Failure to Find a Replacement Loan Servicer will Result in Chaos for Direct**  
4 **Lenders.**

5 For individual Direct Lenders, the worst case scenario is that a replacement servicer  
6 cannot be found and the LSAs are rejected as being a burden to the Estate. In such a scenario,  
7 hundreds of Direct Lenders on individual loans, who are not in contact with one another and  
8 spread out across the country, would be unable to take any meaningful action under their  
9 respective loans. Among other things, there would be no party to perform accountings, deal with  
10 non-performing loans, coordinate foreclosures or even accept monthly payments. To ensure  
11 there is an orderly process by which to select a replacement servicer, the Official Committee of  
12 Direct Lenders supports the Bid Procedure Motion.

14 **II.**  
15 **CONCLUSION**

16 For the reasons set forth herein, the Official Committee of Direct Lenders supports  
17 approval of the Bid Procedures Motion and for such further relief as is necessary.

18 DATED this 23rd day of October, 2006.

19 GORDON & SILVER, LTD.

20 By 

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